

FIELD LAW GROUP, PLLC

Gary L. Field
Gary A. Gensch *
Hai Jiang

3493 Woods Edge Drive, Suite 100
Okemos, Michigan 48864-5985
Telephone (517) 913-5100
Facsimile (517) 913-3471
www.fieldlawgroup.com

Of Counsel:

Norman C. Witte
John R. Liskey
Gregory R. Basore
Joy L. Witte
Perry B. Thompson **
Kimberly L. Savage
Matthew J. Stephens

Writer's email address:
glfield@fieldlawgroup.com

Writer's direct dial:
(517) 913-5102

* Also Licensed in Indiana

** Also Licensed in West Virginia and Virginia

August 15, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

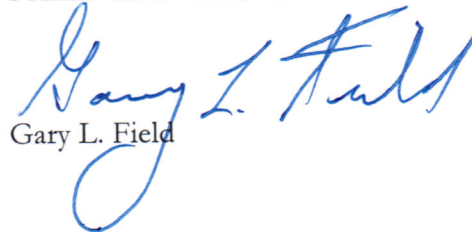
Re: *In re tw telecom inc.*
WC Docket No. 11-119

Dear Ms. Dortch:

Enclosed for filing is Comments of the Michigan Internet and Telecommunications Alliance in the above-referenced docket.

Very truly yours,

FIELD LAW GROUP


Gary L. Field

GLF/cm
Enclosure

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

tw telecom inc. Petition for Declaratory)	
Ruling Regarding Direct IP-to-IP)	WC Docket No. 11-119
Interconnection Pursuant to)	
Section 251 (c)(3) of the)	
<u>Communications Act</u>)	

**COMMENTS OF THE MICHIGAN INTERNET AND
TELECOMMUNICATIONS ALLIANCE**

The Michigan Internet and Telecommunications Alliance (“MITA”) is a trade association of Michigan-based competitive internet and telecommunications providers. MITA hereby submits the following comments in accordance the Federal Communication Commission’s (“FCC”) Public Notice, released July 15, 2011, in DA 11-1198. MITA supports the Petition for Declaratory Ruling filed by tw telecom inc. (“TWTC”) regarding IP-to-IP interconnection.

- A. The natural result of competition is an *increase* in new and better technology. It would create a paradox if the legal effect of new and better technology were to result in a decrease in competition.**

When Congress enacted the Federal Telecommunication Act of 1996 (“FTA”), the fundamental economic premise was that the forces of competition could more effectively and efficiently foster improved telecommunications services and appropriate rates than could governmental regulation. There is no indication that such a sweeping change in public policy was merely intended to be limited to services that utilized the specific switching technology that happened to be in place in the industry at that particular moment in time the statute was enacted.

To the contrary, policymakers of the time understood that the result of competition would be new and better technology than what then existed. Michigan deregulated local service in 1995. Its statute is said to have influenced the Federal Act, which was enacted a year later. The Michigan Telecommunications Act (“MTA”) expressly stated that its purpose was to simultaneously:

“(c) encourage the introduction of new services, the entry of new providers, the **development of new technologies**, and increase investment in the telecommunications infrastructure through incentives to providers to offer the most efficient services and products.”

and

“(g) authorize actions to encourage the development of a competitive telecommunication industry.” MCL 484. 2101(2)(c) and (g).

Clearly, in Michigan at least, it was not intended that the development of new technologies would cause an abrupt halt in the state’s encouragement of a competitive telecommunications industry.

B. All carriers are required to interconnect their networks. Such obligation is not limited by the technology employed to exchange traffic.

At the Federal level, ***every*** telecommunications carrier – whatever their strip – has one obligation and is subject to one restriction. That one common obligation requires each telecommunications carrier to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” 47 U.S.C. 251(a)(1). There are no statutory escapes or qualifications that excuse a carrier from complying with this fundamental obligation. And, indisputably, there is no basis for anyone to argue that the introduction of new and improved technology voids this unqualified mandate.

The only common restriction that applies to each telecommunications carrier is found in 47 U.S.C. 251(a)(2). That provision prohibits providers from installing functions that would cause network problems. Certainly a technology that improves efficiency and capabilities while saving costs would not fall within this prohibition.

Congress included Section 256 in the FTA for the specific purpose of charging the FCC with the responsibility to advance the interconnectivity of networks in the broadest manner possible. Section 256 explicitly provides:

(a) It is the purpose of this section--

(1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through--

(A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and

(B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and

(2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

IP-to-IP interconnection advances the strong mandate of Section 256.

C. The history of telecommunications is replete with revolutionary technological developments. IP-to-IP interconnection is merely another such development.

IP-to-IP interconnection is a technological development that offers significant benefits to the public. But since the inception of telecommunications, there have been constant and frequent revolutionary changes. The first phones had contained batteries and had to be cranked. It was a revolutionary development when electric current was sent over the lines obviating the need for batteries. It was a revolutionary development when the both the receiver and transmitter were placed in one handset and attached with a long cord to the base.

No longer did subscribers have to stand and speak into an apparatus affixed to the wall. The first phones had no dials. It was revolutionary when switching equipment replaced the need for human operators to manually connect calls. The building of lines to connect distant exchanges was a significant improvement. The aggregation of traffic at tandems and subsequent development of area codes was an essential step in creating our present day network. The expansion of local calling from a single exchange to a local calling area produced great benefits. Private lines replaced public lines. Touch-tone dialing replaced rotary dialing. Digital signals replaced analog signals. DSL technology increased by many fold the capacity of copper wires. IP-to-IP interconnection is another technological advancement in the long string of advancements past and present, as we strive towards future achievements.

When Congress enacted the FTA, it was well aware that telecommunications technology had never been static. Certainly, if Congress in 1996 had intended that its sweeping public policy change was to apply only to one frozen technological moment, it would have been clearly and specifically expressed such intent.

In 2001, the FCC properly recognized the ever-evolving nature of the network. In its ISP Remand Order, CC Dockets 96-98 and 99-68, released April 27, 2001, the FCC wrote:

“51. We expect that, as new network architectures emerge, the nature of telecommunications traffic will continue to evolve. As we have already observed, since Congress passed the 1996 Act, customer usage patterns have changed dramatically; carriers are sending traffic over networks in new and different formats; and manufacturers are adding creative features and developing innovative network architectures. Although we cannot anticipate the direction that new technology will take us, we do expect the dramatic pace of change to continue. Congress clearly did not expect the dynamic, digital broadband driven telecommunications marketplace to be hindered by rules premised on legacy networks and technological assumptions that are no longer valid. Section 251(i), together with section 201, equips the Commission with the tools to ensure that the regulatory environment keeps pace with innovation.”

IP-to-IP interconnection is another step in the continuing evolution of telecommunications, whose benefits to public and industry alike compel standards-based interconnection.

D. Failure to hold ILECs to their obligations under the FTA would destroy the *quid pro quo* on which the FTA was based.

When the FTA was enacted, a grand bargain was struck. In exchange for deregulation and the authorization to enter the long distance market, ILECs were to provide competitors open access to their networks. In Michigan, rate regulation no longer exists and the ILECs have full authority and ability to provide long distance services. ILECs have received enumerable benefits of the grand bargain; and competitors must continue to have full and open access to the network so all market participants can continue to be beneficiaries of the progress that competition has and will continue to achieve. The fact that the technology for such interconnectivity has continued to evolve, as was hoped, should not be permitted to destroy the *quid pro quo* of the bargain that Congress made for the benefit of the public.

E. Conclusion

The FCC should grant the Declaratory Ruling that the TCTW seeks.

Dated: August 15, 2011

By:

MICHIGAN INTERNET AND TELECOMMUNICATIONS
ALLIANCE


Mark Iannuzzi

Its: President

P.O. Box 4723
East Lansing, MI 48826
(517) 913-5116